

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HADDRICK BYRD,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 06-1957
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants.	:	
	:	

Baylson, J.

August 10, 2006

MEMORANDUM AND ORDER

Pro se Plaintiff Haddrick Byrd challenges his arrest and conviction for murder. For the following reasons, the Court will grant Defendants' Motion to Dismiss (Doc. No. 6).

This action is nearly identical to an action brought by Plaintiff in this district in 1999. See Byrd v. Parris, et al., C.A. No. 99-769 (hereinafter "Byrd I"). By Order dated October 15, 1999, Judge Broderick granted a motion to dismiss filed in that action. See October 19, 1999 Order in Byrd I. Judge Broderick determined that the all of Plaintiff's claims must necessarily fail because of either (1) the doctrines of judicial and prosecutorial immunity (for the defendants who were members of the judiciary and employees of the Philadelphia District Attorney's Office, respectively), or (2) the Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994), which bars a collateral attack through a civil action of a criminal conviction that has not been reversed or otherwise invalidated (for the defendants who were Philadelphia police detectives).

Plaintiff's current lawsuit is a mere re-packaging of the claims brought in Byrd I. Plaintiff brings his current action against the City of Philadelphia, Mayor John Street, District

Attorney Lynne Abraham, Police Commissioner Sylvester Johnson, various city employees, various employees of the Philadelphia District Attorney's Office, and various employees of the Philadelphia Police Department. All of Plaintiff's claims in the current complaint challenge various aspects of his 1974 arrest, prosecution and conviction for murder.

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

For the same reasons as those enunciated by Judge Broderick in Byrd I, defendant District Attorney Lynne Abraham and the defendants who are employees of the Philadelphia District Attorney's Office are entitled to absolute prosecutorial immunity. Imbler v. Pachtman, 424 U.S. 409 (1976); Kalina v. Fletcher, 522 U.S. 118 (1997).

All remaining defendants are entitled to dismissal for multiple reasons. The primary reason is that, as Judge Broderick found in Byrd I, Heck explicitly prohibits the type of collateral attack on a criminal conviction that Plaintiff attempts again. Under Heck, a Section 1983 plaintiff seeking to recover damages from an unconstitutional conviction or imprisonment must prove that the conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into

question by a federal court's issuance of a writ of habeas corpus." Heck, 512 U.S. 477, 486-87.

Plaintiff's conviction was affirmed by the Pennsylvania Supreme Court on July 3, 1980. Indeed, Plaintiff acknowledges in the Complaint that his efforts to have his murder conviction set aside have been unsuccessful. See Complaint at ¶¶ 64-71. Plaintiff has not and indeed cannot prove that his conviction has been invalidated. Therefore, Plaintiff's claims against all remaining defendants are not cognizable under Section 1983.¹

The Court notes that beyond the clear and straightforward application of Heck, there are other fully and independently dispositive grounds on which the Court could dismiss all of Plaintiff's claims.

First, the doctrine of issue preclusion bars most of the claims asserted by Plaintiff and previously decided on the merits in Byrd I. See In re Continental Airlines, Inc., 279 F.3d 226, 232 (3d Cir. 2002) (holding that judgment on the merits in a prior suit involving the same parties or their privies based on the same cause of action is binding upon re-litigation of the same issues); Edmundson v. Borough of Kennett Square, 4 F.3d 186, 189 (3d Cir. 1993) ("Issue preclusion, otherwise known as collateral estoppel, bars re-litigation of an issue identical to that in a prior action."). Here, Plaintiff brings claims based on "false arrest," due process, equal protection, and the Eighth Amendment that all mirror claims brought in Byrd I. Judge Broderick's determination as to those claims is therefore conclusive in this case.

Second, claim preclusion bars any "new" claims where there is an "essential similarity of

¹ Plaintiff's Complaint also mentions 42 U.S.C. § 1994 and 18 U.S.C. § 1581. However, Plaintiff does not once in his lengthy Complaint state any claim upon which relief can be granted pursuant to either of those statutes. Therefore these claims, to the extent that Plaintiff is actually making said claims, will also be dismissed.

the underlying events giving rise to the various legal claims.” United States v. Athlone Indus., Inc., 746 F.2d 977, 984 (3d Cir. 1984). The Court agrees with Defendants that an examination of the criteria set forth by the Third Circuit in Athlone indicates that the causes of action in Byrd I and the instant case are “essentially similar” because both complaints are nothing more than repeated assertions that plaintiff was falsely arrested and convicted. The material facts alleged in both suits are the same, the acts complained of are the same, and the witnesses and documents would be the same. The doctrine of claim preclusion exists in part to prevent the exact type of piecemeal litigation that Plaintiff seeks to pursue.²

Third, Plaintiff’s claims are barred by the statute of limitations. Claims of constitutional violations such as those advanced by Plaintiff are governed by the state statute of limitations for personal injury claims. Wilson v. Garcia, 471 U.S. 261, 266-67 (1985); Pratt v. Thornburgh, 807 F.2d 355 (3d Cir. 1986). In Pennsylvania, a plaintiff must bring a cause of action within two years of the injury giving rise to the alleged violations. See 42 Pa. C.S.A. § 5524; Rose v. Bartle, 871 F.2d 331, 350 (3d Cir. 1989). Here, the actions about which Plaintiff complains occurred in 1975. See, e.g., Complaint at ¶ 32-37. Such claims are therefore time-barred.

Finally, Plaintiff’s claims against certain Defendants are fundamentally legally insufficient. The claims against Mayor John Street and Police Commissioner Sylvester Johnson are legally insufficient because Plaintiff does not allege “personal direction” or “actual knowledge and acquiescence” in unconstitutional conduct. See, e.g., Baker v. Monroe Twp., 50 F.3d 1186, 1194 (3d Cir. 1995). Additionally, the claims against the City of Philadelphia must

² To the extent that Plaintiff has generated any novel claim in the current Complaint, he should have asserted that claim in Byrd I.

fail because Plaintiff has not alleged that violations of his rights occurred pursuant to a municipal policy or custom of deliberate indifference to rights of citizens. See, e.g., Monell v. New York City Dept. Of Soc. Servs., 436 U.S. 658, 694-95 (1978); Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990). Plaintiff cannot recover against the City of Philadelphia on a respondeat superior theory of liability.

For all these reasons, the Court will grant the Motion to Dismiss with prejudice.

AND NOW, this 10th day of August, 2006, after careful review of the record and parties' briefs, it is hereby ORDERED that Defendants' Motion to Dismiss (Doc. No. 6) is GRANTED with prejudice. The Clerk shall close this case.

BY THE COURT:

s/Michael M. Baylson

Michael M. Baylson, U.S.D.J.